IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 7874 of 2004(K)

OS.64/1976 of PRL.MUNSIFF COURT, CHERTHALA
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PETITIONER:

SIVANKUTTY NAIR, AREEPARAMBU CHAVADY VEETTIL, CHERTHALA THEKKU VILLAGE, CHERTHALA THEKKUM MURI, CHERTHALA.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS:
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1. **CHANDRASEKHARAN PILLAI, CHANDRAMANGALATHU VEETTIL, CHERTHALA THEKKUM MURI CHERTHALA THEKKU VILLAGE, CHERTHALA.**

2. **SUNDARIKUTTY AMMA, AREAPARAMBU, CHAVADY VEETTIL, -DO- -DO-**

3. **GANGHADHARAN, AREEPARAMBATHU VELIYIL, THEKKEPURAYIDATHIL, -DO- -DO-.**

BY ADV. SRI.G.SUKUMARA MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, ALONG WITH CRP . NO. 2144 OF 2003 CRP NO. 1464 OF 2002 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.7874/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE I.A. NO.1157/99 IN AS. NO.80/99 OF THE SUB COURT CHERTHALA DT. 2.11.99.

EXT.P2:- COPY OF THE ORDER IN IA. NO.1157/99 IN AS. NO.80/99 OF THE SUB COURT, CHERTHALA DT. 25.6.03.

/TRUE COPY/

P.A. TO JUDGE

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PIUS C. KURIAKOSE, J.

W.P.(C) No. 7874 of 2004, CRP Nos.2144 of 2003
and 1464 of 2002

Dated this the 17th day of July, 2007

JUDGMENT

Even though it cannot be said that the order of the learned Sub Judge dismissing the application for condonation of delay is wholly unreasonable and unreasoned justifying invocation of supervisory jurisdiction under Article 227, I feel having regard to the principles laid down by the Supreme Court in **Collector, Land Acquisition, Anantnag & another v. Mst.Katiji & others (1987 SC 1353)** and also in **N.Balakrishnan v. M.Krishnamurthy** [**1998(7) SCC 123**] that the learned Subordinate Judge could have allowed the application for condonation of delay putting the petitioner to very stringent terms. I notice that the petitioner had raised arguable grounds in the memorandum of appeal. I also notice that substantial portion of the delay was the delay occasioned in the matter of filing the copy application. Petitioner had attributed this delay to the untimely demise of his advocate, one Mr.Vijayakumar, who died in a road accident and the court below has practically accepted the petitioner's explanation regarding that part of the delay. The disagreement expressed by the court below is regarding the explanation of the petitioner regarding the delay occasioned thereafter. The policy of law is to facilitate

adjudication of all cases on merits and I feel that the petitioner who had a fairly arguable case in the appeal has been deprived of an opportunity to have an adjudication of appeal on merits and in that way substantial justice has been denied to him. I set aside the order dismissing the delay petition and allow the delay condonation petition but on condition that the petitioner shall pay a sum of Rs.10,000/- to the 1st respondent in WP(C) No.7874 of 2004 within one month from today and pays a further sum of Rs.1,000/- to the High Court Legal Services Committee within the aforesaid time limit. If both the amounts are not paid as directed above within the aforesaid time limit, Ext.P2 the impugned order will stand confirmed and the Writ Petition and both the CRPs will stand dismissed. But if payments are made, the orders impugned in CRPs will also stand set aside and there will be a direction to the lower Appellate Court to hear and dispose of Appeal, AS No.80 of 1999 in accordance with law. Being an appeal of 1999, the learned Judge will expedite the matter and ensure that the appeal is disposed of within three months of receiving copy of this judgment.

PIUS C. KURIAKOSE, JUDGE

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